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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DIANE C. THORNTON, MICHAEL S. HESS,
and RICKEY HOWARD JOHNSON

Appeal 2009-003169
Application 10/729,496
Technology Center 2100

Decided: December 29, 2009

Before LEE E. BARRETT, JAY P. LUCAS, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-24. We affirm.

The Invention

Appellants' invention relates to telecommunications. More particularly, the claimed invention on appeal is directed to managing and tracking changes to a telecommunications network. (Spec. 2).

Claims 1 and 17 are illustrative:

1. A fiber splice management and assignment system, comprising:

a database operable to store a fiber splice record associated with a wirecenter, the fiber splice record identifying a fiber splice job to be performed at the wirecenter, the fiber splice management and assignment system tracking workflow of fiber splice jobs identified by a plurality of fiber splice records, the fiber splice jobs corresponding to generated engineering work-orders;

assignment logic coupled to the database, operable to assign a fiber splice record associated with a fiber splice job for the wirecenter to a draftsman and to record the assignment, wherein the fiber splice management and assignment system is configured to identify each fiber splice record assigned to the draftsman, the draftsman being assigned to make changes shown in a generated engineering work-order to the fiber splice record; and

completion logic coupled to the database, operable to receive a request to close the fiber splice record from the draftsman, and receive a credit amount associated with the fiber splice job from a fiber splice manager, the credit amount being assigned to the draftsman that performed the fiber splice job.

17. A computer readable medium having a program for assigning and managing a plurality of fiber splice jobs, the program comprising:

storing a fiber splice record associated with a wirecenter in a database, the fiber splice record identifying a fiber splice job to be performed at the wirecenter, the fiber splice job corresponding to a generated engineering work-order;

assigning a fiber splice record associated with a fiber splice job for the wirecenter to a draftsman as part of workflow tracking process for fiber splice jobs;

recording the assignment;

receiving a request from a user to mark the fiber splice record as closed; and

assigning credit for the fiber splice job based upon input from a fiber splice manager, the credit being assigned to the draftsman that performed the fiber splice job.

Prior Art

The Examiner relies on the following references as evidence:

VanDusen	US 2003/0208397 A1	Nov. 6, 2003
Kite	US 2005/0149372 A1	Jul. 7, 2005

The Rejection

The Examiner rejected claims 1-24 as unpatentable over Kite and VanDusen under 35 U.S.C. § 103(a).

Claim Grouping

Based on Appellants' arguments in the Appeal Brief, we will decide the appeal on the basis of claims 1 and 17. *See* 37 C.F.R. §41.37(c)(1)(vii).

FINDINGS OF FACT

In our analysis *infra*, we rely on the following findings of fact (FF):

Kite

1. Kite discloses a “resource planning application.” (*See* Abst.).
2. Kite discloses a Fiber Management Tool (FMT) that monitors the utilization of an existing fiber optic network and makes this information readily accessible to Designers and Construction Repair technicians. (*See* Para. [0317]).
3. Kite discloses that the FMT may include the functionality integrated with existing Mechanical Facility Management databases that track, in association with other tools, the location of fiber and fiber splice features. (Para. [0318]).
4. Kite discloses a data definition of an EWO # (Engineering Work Order) that placed or modified a piece of equipment. (*See* para. [0562]).
5. Kite discloses a graphical feature that allows users to use the FMT to enter and manage LRS notes. (Para. [0509]).
6. Kite discloses a SCID Log Tool that allows users to view SCID assignments (jobs), select new SCID assignments, or unassign a SCID, where the status includes new, assigned, deleted, and unassigned. (Para. [0449]).

VanDusen

7. VanDusen discloses getting paid for a job completion. (Para. [0557]).

APPELLANTS' CONTENTIONS

1. Appellants contend that Kite does not involve actual engineering work. Thus, Kite fails to teach or suggest “the fiber splice record identifying a fiber splice job to be performed at the wirecenter, the fiber splice management and assignment system tracking workflow of fiber splice jobs identified by a plurality of fiber splice records, [and] the fiber splice jobs corresponding to generated engineering work-orders.” (App. Br. 9, 16).
2. Appellants contend that Kite is not directed to an assignment of a draftsman to a fiber splice job. (App. Br. 10, 17).
3. Appellants contend that Kite fails to disclose completion logic coupled to the database, operable to receive a request to close the fiber splice record from the draftsman, and receive a credit amount associated with the fiber splice job from a fiber splice manager, the credit amount being assigned to the draftsman that performed the fiber splice job. (App. Br. 10-11, 17).

ISSUES

Based upon our review of the administrative record, we have determined that the following issues are dispositive in this appeal:

1. Have Appellants shown the Examiner erred in finding that the cited references collectively teach or would have suggested “the fiber splice

record identifying a fiber splice job to be performed at the wirecenter, the fiber splice management and assignment system tracking workflow of fiber splice jobs identified by a plurality of fiber splice records, [and] the fiber splice jobs corresponding to generated engineering work-orders?”
(Independent claim 1.)

2. Have Appellants shown the Examiner erred in finding that the cited references collectively teach or would have suggested assigning a fiber splice record associated with a fiber splice job for the wirecenter to a draftsman? (Independent claims 1 and 17.)

3. Have Appellants shown the Examiner erred in finding that the cited references teach or would have suggested completion logic coupled to the database, operable to receive a request to close the fiber splice record from the draftsman, and receive a credit amount associated with the fiber splice job from a fiber splice manager, the credit amount being assigned to the draftsman that performed the fiber splice job? (Independent Claim 1; *see* commensurate language recited in independent claims 9 and 17.)

PRINCIPLES OF LAW

Obviousness

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1,

17-18 (1966).

“What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 419 (2007). To be nonobvious, an improvement must be “more than the predictable use of prior art elements according to their established functions.” *Id.* at 417.

Invention or discovery is the requirement which constitutes the foundation of the right to obtain a patent . . . unless more ingenuity and skill were required in making or applying the said improvement than are possessed by an ordinary mechanic acquainted with the business, there is an absence of that degree of skill and ingenuity which constitute the essential elements of every invention.

Dunbar v. Myers, 94 U.S. 187, 197 (1876) (citing *Hotchkiss v. Greenwood*, 52 U.S. 248, 267 (1850)) (*Hotchkiss v. Greenwood* was cited with approval by the Supreme Court in *KSR*, 550 U.S. at 406, 415, 427).

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner’s position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006). Therefore, we look to Appellants’ Briefs to show error in the proffered prima facie case.

ANALYSIS

Issue 1

We decide the question of whether Appellants have shown the Examiner erred in determining that the cited references teach or suggest “the fiber splice record identifying a fiber splice job to be performed at the wirecenter, the fiber splice management and assignment system tracking

workflow of fiber splice jobs identified by a plurality of fiber splice records, [and] the fiber splice jobs corresponding to generated engineering work-orders,” as recited in claim 1.

Appellants contend that the cited references, most notably Kite, do not involve actual engineering work or tracking functions involving making changes to records reflecting the work being performed. (App. Br. 9, 16). We do not agree for the reasons discussed below.

We find that Kite is directed to a resource planning tool. (FF 1). Planning resources include telephone network resources, which we find are directed to engineering work, or at least provide a strong suggestion thereof. (See para. [0003]). Further, we find that the fiber management tool (FMT) disclosed in Kite tracks engineering functions, including those functions associated with splicing fiber optic networks. (FF 2-3). In particular, Kite’s FMT monitors the utilization of an existing fiber optic network to make this information readily accessible to designers and construction repair technicians. (*Id.*). Moreover, we find that Kite’s Engineering work-orders (EWO) track the work being performed. (FF 2 and 4). Therefore, we find that Kite is directed to engineering work, and thus we find the combination of Kite and VanDusen teaches or would have strongly suggested the aforementioned argued limitations. (Independent claim 1.)

Issue 2

We decide the question as to whether the cited references collectively teach or would have suggested assigning a fiber splice record associated

with a fiber splice job for the wirecenter to a draftsman. (Claims 1, 9, and 17).

As previously discussed, Kite discloses a Fiber management Tool (FMT) that monitors the utilization of an existing fiber optic network and makes this information readily accessible to Designers and Construction Repair technicians. (FF 2). As noted above, Kite also discloses a data definition of an EWO # (Engineering Work Order, i.e., a record) that placed or modified a piece of equipment. (FF 4). Kite also teaches tracking fiber splices. (FF 3). Therefore, we find that the combination Kite and VanDusen teaches or would have suggested assigning a fiber splice record (FMT and EWO) associated with a fiber splice job for the wirecenter to a draftsman (designer), as recited in commensurate form in each of independent claims 1, 9, and 17.

Issue 3

We decide the question as to whether the cited references collectively teach or would have suggested the limitation of assigning credit for the fiber splice job based upon input from a fiber splice manager, the credit being assigned to the draftsman that performed the fiber splice job. (Independent Claim 1; *see* commensurate language recited in independent claims 9 and 17).

We note that the Examiner relied on VanDusen for a teaching or suggestion of this limitation. (Ans. 5-6). We further note that in the principal Brief Appellants merely recite this limitation and assert that the limitation is not taught or suggested by Kite. (App. Br. 17). We note that a

statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Nevertheless, we note that “[t]he test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art.” *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)). “Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.” *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *Keller*, 642 F.2d at 425). In determining obviousness, a reference “must be read, not in isolation, but for what it fairly teaches in combination with the prior art as a whole.” *Id.*

This reasoning is applicable here. We find that the secondary VanDusen reference evidences that it was well known in the art at the time of the invention to assign credit to an individual for performing a job. (*See* FF 7). Thus, we find that the combination of the cited references teaches or would have suggested assigning credit (FF 7) for the fiber splice job (*see* FF 2-4) based on input from a fiber splice manager, the credit being assigned to the draftsman that performed the fiber splice job. (*See* FF 4-6). We also find that the associated “completion logic coupled to the database” recited in the commensurate language of claim 1 is taught or would have been reasonably suggested by Kite’s databases that are integrated with the FMT. (FF 2-3).

Independent claims

For at least the aforementioned reasons, we find Appellants have not shown error in the Examiner's obviousness rejection of independent claims 1, 9, and 17.

Dependent claims

We note that Appellants' principal Brief does not present separate arguments for the dependent claims. Instead, the patentability of these claims is based on the arguments presented above for independent claims 1, 9, and 17, which we do not find to be persuasive. Therefore, we sustain the Examiner's § 103 rejection of associated dependent claims 2-8, 10-16, and 18-24 for the same reasons discussed *supra* for independent claims 1, 9, and 17.

CONCLUSIONS

Appellants have not shown the Examiner erred in finding:

1. The cited references collectively teach or would have suggested "the fiber splice record identifying a fiber splice job to be performed at the wirecenter, the fiber splice management and assignment system tracking workflow of fiber splice jobs identified by a plurality of fiber splice records, [and] the fiber splice jobs corresponding to generated engineering work-orders."

2. The cited references collectively teach or would have suggested assigning a fiber splice record associated with a fiber splice job for the wirecenter to a draftsman.

3. The cited references collectively teach or would have suggested completion logic coupled to the database, operable to receive a request to close the fiber splice record from the draftsman, and receive a credit amount associated with the fiber splice job from a fiber splice manager, the credit amount being assigned to the draftsman that performed the fiber splice job.

DECISION

We affirm the Examiner's rejection of claims 1-24 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

msc/nhl

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